

Workshop on Possible Legislation:

Standards for Release of Confidential Information

9:00 a.m., September 4, 2001

Background RCW 80.04.095 defines standards that courts are to apply when deciding whether business information on file with the Commission is subject to disclosure under the open public records act. There is no comparable provision in Title 81, governing the regulation of transportation companies, although that industry is now more competitive than it was in 1987. The possibility of different rulings upon different standards in different industries has led the Commissions to consider asking that the same standards apply to transportation documents, as well.

What is the Proposal?

- This proposal at this point is to copy exactly in chapter 80.04 the provision that now exists only in Chapter 80.04 RCW.
- The Commission may consider whether to propose revisions to the common language to improve clarity.

Why are we proposing to make this change?

- The provisions in the utility chapter have been tested several times in court and have never been appealed, leading us to believe that they set a clear and appropriate balance between protection of competitive interests and disclosure to the Commission of information essential for regulatory purposes.
- The Commission is concerned that without similar provisions in title 81, it may be more difficult to secure information needed for regulatory purposes.
- In contested proceedings under Title 80, Commission protective orders have facilitated disclosure to participants and the Commission. The Commission is concerned that a lack of similar standards may make it more difficult to conduct adjudications on a full record.

What would the consequences be?

- Information would be more freely available, especially for hearings.
- In the event of challenges, the standards of the statute would make judicial decisions more consistent, predictable, and faster.